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W.P. No. 36416 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 36416 of 2023

and

W.M.P. Nos. 36432 and 36433 of 2023

D.Umamaheswari

... Petitioner

-VS-

1. The Registrar of Co-operative Societies
No.170, Periyar EVR High Road
Kilpauk, Chennai – 600010.
2. The Joint Registrar of Co-operative Societies
4th Block, Collectorate Campus
Sathuvachari, Vellore – 632 002.
3. The Deputy Registrar of Co-operative Societies
Vellore Circle
No.6, Thulasingham Street
Sankaranpalayam, Vellore – 632 001.

4. T.V.Suresh Gupta

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the Third Respondent in Na.Ka. No. 688/2023 Sa Pa (Surcharge No. 02/2023-24) dated 16.10.2023



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(received on 06.12.2023) and remand back to any other Deputy Registrar of

Cooperative Societies other than Fourth Respondent herein for conduct of fair enquiry under Section 87 by adhering all procedures as stipulated under Section 87(4) and by providing all the documents /sufficient opportunities to cross examine the witnesses /Beneficiaries to the Petitioner, in accordance with law.

For Petitioner : Mr. K.Rajendran

For Respondents : Mr. B.Vijay, AGP (RR1 to 3)

ORDER

Heard Mr. K.Rajendran, Learned Counsel for the Petitioner and Mr. B.Vijay, Learned Additional Government Pleader appearing for the First to Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. Having regard to the nature of order proposed to be passed in the Writ Petition, which would not cause any prejudice to the Fourth Respondent, notice to him is dispensed with.



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3. The Writ Petition has been filed challenging the Orders in Na. Ka. No. 688/2023 Sa Pa (Surcharge No. 02/2023-24) dated 16.10.2023 (received on 06.12.2023) passed by the Third Respondent holding the Petitioner and certain others, who are the erstwhile office-bearers of Vellore District Central Co-operative Bank (hereinafter referred to as 'the Co-operative Society' for short), jointly liable for the financial loss incurred by that Co-operative Society and to remand it back to any other Deputy Registrar of Co-operative Societies other than the Fourth Respondent for conduct of fair enquiry under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the TNCS Act' for short) by adhering all procedures as stipulated under Section 87(4) of the TNCS Act and by providing all the documents and sufficient opportunities to cross-examine the witnesses including beneficiaries to the Petitioner in accordance with law.

4. In this context, it must be noticed that aforesaid order of the Third Respondent has been passed in the exercise of powers under Section 87 of the TNCS Act against which the Petitioner is entitled to prefer appeal under Section 152 of the TNCS Act before the Special Tribunal for Co-operative



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Cases, which has also been empowered to condone delay in filing the same after the prescribed period of limitation has expired, if sufficient cause is made out.

5. It must, at once, be emphasized that the Hon'ble Supreme Court of India in *Assistant Collector of Central Excise -vs- Dunlop India Limited* [(1985) 1 SCC 260] has precisely explained the legal position relating to the exercise of discretionary powers under writ jurisdiction when an alternative remedy exists, in the following words:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are



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available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.”

In ***Nivedita Sharma -vs- Cellular Operators Association of India*** [(2011) 14 SCC 337], advertent to the the previous decisions with regard to the rule of self-restraint when an alternative remedy is available to the aggrieved person, the Hon'ble Supreme Court of India has emphasized that when a statutory forum is created by law for redressal of grievance, a Writ Petition should not be ordinarily entertained ignoring that statutory dispensation. Further, the law has been restated by the Hon'ble Supreme Court of India in ***Radha Krishan Industries -vs- State of Himachal Pradesh*** [(2021) 6 SCC 771] as extracted below:-

“27.1. *The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.*

27.2. *The High Court has the discretion not to entertain a*



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writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. *Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.*

27.4. *An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.*

27.5. *When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a*



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rule of policy, convenience and discretion.

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27.6. *In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”*

In such circumstances, the Petitioner has not been impeded from canvassing what is sought to be agitated in the Writ Petition in the aforesaid statutory remedy and there is no acceptable explanation from the Petitioner for not having availed it.

6. When the said legal position was pointed out to Learned Counsel for the Petitioner, he seeks permission of the Court to withdraw the Writ Petition with liberty to resort to the aforesaid procedure. He has also made an endorsement to that effect in the court record.

In the result, the Writ Petition is dismissed as withdrawn granting such liberty. It is made that clear for the purpose of reckoning limitation for availing the aforesaid remedy, the period from the date of filing of the Writ Petition,



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viz., 26.12.2023, till the date on which the certified copy of this order is made

ready by the Registry, shall be excluded. Consequently, the connected

Miscellaneous Petitions are closed. No costs.

11.01.2024

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 22.05.2024.

Maya

To

1. The Registrar of Cooperative Societies
No.170, Periyar EVR High Road
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P.D. AUDIKESAVALU, J.

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